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Australian Energy Regulator

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AER Hardship Guideline Issues Paper

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator (AER) consultation on the AER Issues Paper on Hardship Guidelines (Issues Paper).

AGL welcomes the Australian Energy Market Commission (Commission) new National Energy Retail Rule (Retail Rule) 75A that allows the AER to develop a Hardship Guideline that specifies standardised statements that retailers must include in their hardship policies and inform consumers of how retailers will comply with the minimum requirements in section 44 of the Retail Law. We believe this new measure will provide greater clarity of support for consumers in financial hardship in paying their energy bill.

AGL are highly supportive of the AER for seeking early feedback on the likely standardised statements and we are generally supportive of these statements, with comments provided in our earlier submission. Our feedback to date on the statements has been aimed at improving the clarity for consumers and the ability for retailers to turn these actionable statements into tangible support for customers. Feedback from the AER to AGL following the 2017 AER Hardship Survey resulted in AGL working closely with the AER to make improvements to our existing hardship policy (Staying Connected). This has led to AGL introducing in January 2019 new and innovative early identification measures and communication based on customer behavioural analytics.

AGL is supportive of measures that help improve customer outcomes. However, it is important to ensure that AER's Guideline remains within the bounds of new final Rule from the Commission. Apart from the standardised statements, the AER Issues Paper poses questions and seeks to address two key areas, namely, communication (accessibility) and systems (processes). AGL considers this is beyond the scope of the new Rule, and beyond other elements of the National Energy Retail Law (Retail Law).

Under the Retail Law, if a retailer's hardship policy contains the minimum requirements outlined in section 44 and achieves the overall objectives outlined in section 45 for AER approval, the policy should be approved.

We see the role of the AER in this space as two-fold. One is to set the actionable statements against the minimum requirements as provided for under the new section 75A of the Retail Rules. The second is to provide guidance to the industry, due to the position of both rule maker and enforcer, on better practice approaches the AER consider help improve consumer outcomes.



We therefore see a dual role for the Hardship Guideline. One to set the binding minimum requirements of a hardship policy through the actionable statements in line with 75A, and the other to provide non-binding guidance for better practice on matters such as accessibility and process as identified in the Issues Paper.

This approach will help retailers deliver better outcomes for customers, from being able to learn from and adapt the knowledge and practice the AER has regard for, while still allowing retailers to pursue their own unique approach that is within the bounds of the NERL and achieves the overall objectives in section 43.

I have attached an appendix with a more detailed response to the Issues Paper. Should you have any questions or comments, please contact Kathryn Burela on 0498 001 328 or kburela@agl.com.au.

Yours sincerely

[Signed]

Con Hristodoulidis

Senior Manager Regulatory Strategy



Final rule change

The Australian Energy Market Commission (Commission) in their final rule change set the powers of the AER in line with the NERL stating:

The Commission is of the view that the AER should not be given a broader scope when developing the Hardship Guidelines than exists under the NERL. Therefore, the more preferable final rule is limited to the requirements under sections 43 to 45 of the NERL.

Section 45 of the NERL states the matters that the AER must have regard to when approving retailer hardship policies. These matters are a requirement for AER assessment but are not one standard for prescription across retailers. It is our opinion, and the intent of the NERL’s drafting, that there may be many ways a retailer can develop a hardship policy that meets the general objectives under section 45. We note the Commission’s comments in the Final Decision:

Further, section 44(h) of the NERL allows the AER to make variations with regards to how the minimum requirements have been implemented in a hardship policy so that they meet the principles in section 45(3). The Commission’s interpretation of this power is that it does not extend to the AER making additional minimum requirements, and any variations must be within the scope of the minimum requirements¹.

While efficiencies may be achieved by the AER is setting one standard for communication or process requirements, this is ultimately a matter that should be assessed by the AER on a case by case basis against sections 43-45 of the NERL and the actionable statements set by the AER under 75A. We therefore recommend that the AER seek to make the matters in the Issues Paper guidance material focusing on better practice approaches, rather than binding obligations on retailers.

Subject to our comments above, we have provided more technical detail on issues the AER is seeking feedback on below. The comments are based on providing clarity on how the AER should deal with the issues as part of a non-binding better practice section of the proposed Hardship Guideline.

Scope of proposals

AER questions or comments	AGL comments
Customer representative must be treated and communicated with the same as the customer	A retailer is only able to deal with a customer representative in a way that the customer has authorised them to. Is the expectation that customer representatives would receive relevant customer communications instead of the customer, or in addition to? Addition of sending duplicate copies will unnecessary increase costs without any commensurate consumer benefit. AGL anticipates that during the conversation, the authorised representative and/or retailer may confirm who the most appropriate person and communication mode to send information. If this matter is not discussed directly, AGL would consider the retailer will communicate

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	directly with the person they have a contractual relationship with based on their nominated and preferred communication channel.
Describe the types of systems the retailer has in place to assist in early identification and assistance for customers experiencing hardship	<ul style="list-style-type: none"> • If a customer’s rights do not change, but the retailer upgrades or changes the underlying system, this would require changes to the public facing hardship policy and may result in unnecessary delays due to approval times. • If the policy is intended to be a customer facing document, that is in plain English and accessible for customers then we question the inclusion of details on systems retailers use.
Hardship policies cannot include conditions to entry or re-entry to a hardship program that are reliant on a customer meeting a certain obligation, such as attending financial counselling or being represented by third party such as a financial counsellor, submitting to an energy audit, or paying a certain number of instalments on their debt.	<p>AGL consider this issue be broken into two categories, being:</p> <ol style="list-style-type: none"> 1. New entrants to a retailer’s hardship program. AGL supports entry for these consumers being unconditional. 2. Customers who previously participated in a retailer’s hardship programs, however, were removed from the program due to a lack of engagement. <p>For customers who have been removed from the hardship program due to non-payment/non-engagement in the last three months, AGL believes re-entry should be based on the customer demonstrating a willingness to participate. AGL willingness to participate is set by asking the customer what amount they think is a realistic amount they can pay on a regular basis. We do not prescribe a certain amount (or %) of debt to be paid, and on successfully completion of 4 payments (either weekly or fortnightly), the customer is able to move on to our hardship program.</p> <p>This information is contained in our current hardship policy that was approved by the AER under sections 43-45 of the National Energy Retail Law in November 2018. Given the Commission’s preferable Rule change does not seek to expand the AER powers beyond what is already contained in the NERL we do not agree that an exclusion on ‘willingness to pay’ arrangements should be made.</p>
The adoption of the AER’s <u>voluntary</u> Sustainable Payment Plans Framework as a good practice framework for assessing customers’ capacity to pay, or other relevant authoritative guidance.	We consider that the SPPF or other relevant authoritative guidance should be considered guidance only, not a mandatory requirement. The AER is yet to evaluate the SPPF since it was developed with industry in 2016. Given the significant industry and regulatory change since then, we would urge the framework be assessed to ensure it remains relevant.
A note to the effect that, in offering flexible payment options to hardship customers, the retailer will consider whether debt waivers or payment matching are appropriate.	This should not be a mandatory requirement as there is no obligation for retailers to offer these assistance measures. This should be an optional statement for retailers to incorporate as they develop and offer better solutions for their customers.
Include in their hardship policies effective, <u>best practice methods</u> for communicating with culturally and linguistically diverse communities	Another matter that should not be a mandatory requirement. It is unclear what is being used to determine best practice and this is arguably beyond the scope of power. We recommend this be captured as non-mandatory/better practice guidance.

We recommend that the above matters be listed as non-binding, better practice recommendations by the AER. This approach would serve to help inform retailers of AER expectations, while still allowing flexibility and scope for innovation or other methods that may still meet overall objective for the AER to assess.